MONTANA LEGISLATIVE HISTORY

Chapter 56 19 79

Bill H 75 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Jan 10	✓ C	Hearing Date(s)	Jan 26	✓ C
	Jan 12	✓ C		Jan 29	✓ C
		C			C
		C			C
Date Out	Jan 12	✓ C		Jan 29	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

CHAPTER NO. 56

HOUSE BILL NO. 75

INTRODUCED BY KANDUCH

BY REQUEST OF THE ATTORNEY GENERAL

IN THE HOUSE

January 4, 1979	Introduced and referred to Committee on Judiciary.
January 6, 1979	On motion joint rule 6-6 suspended and sponsor's signature allowed to be added to Pre-Filed bill.
January 12, 1979	Committee recommend bill do pass as amended. Report adopted
January 13, 1979	Printed and placed on members' desks.
January 15, 1979	Second Reading, do pass.
January 16, 1979	Considered correctly engrossed.
January 17, 1979	Third Reading, passed. Transmitted to Second House.

IN THE SENATE

January 18, 1979	Introduced and referred to Committee on Judiciary.
January 31, 1979	Committee recommend bill be concurred in as amended. Report adopted.
February 2, 1979	Second Reading, concurred in.
February 5, 1979	Third Reading, concurred in as amended.

IN THE HOUSE

February 6, 1979	Returned from Second House. Concurred in as amended.
February 7, 1979	Second Reading, pass consideration.
February 8, 1979	Second Reading, amendments rejected.
	On motion Joint Conference Committee requested.
February 9, 1979	Joint Conference Committee appointed.
February 15, 1979	Second Reading, adopted.
February 16, 1979	Third Reading, adopted.
February 20, 1979	Adopted by Senate. Sent to enrolling.
	Reported correctly enrolled.

HOUSE BILL NO. 75

INTRODUCED BY _____

BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 61-8-714, MCA, BY DEFINING 'CONVICTION', AS USED IN THAT SECTION, AS A FINAL CONVICTION OR A FORFEITURE OF BAIL OR COLLATERAL DEPOSITED TO SECURE THE DEFENDANT'S APPEARANCE WHICH FORFEITURE HAS NOT BEEN VACATED."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving while intoxicated. (1) Every person who is convicted of a violation of 61-8-401 shall be punished by a fine of not less than $100 or more than $500. On a second conviction, he shall be punished by a fine of not less than $300 or more than $500. On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days or more than 1 year, to which may be added, in the discretion of the court, a fine of not less than $500 or more than $1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(2) Except as otherwise provided in this section, the court may, in its discretion, suspend the execution of any sentence imposed under subsection (1) on the condition that the defendant successfully complete a course in a driver improvement school approved by the court or an alcohol treatment program approved by the department of institutions. Each school or institution providing such education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been accepted by the school or treatment program. If the defendant fails to attend the school or the treatment program, the school or institution shall notify the court of the failure.

(3) For the purposes of this section, "conviction" means a final conviction, as defined in 45-2-101, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court, which forfeiture has not been vacated."

-End-

HOUSE JUDICIARY COMMITTEE

46th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 32	amend, relating to crime victims, compensation, workers' compensation to comply with federal reqtrs, etc.	1/4	Quilici	Weds 1/12	do pass-amended	1/12
HB 41	revise relating to estates, trusts, fiduciary relationships.	1/4	Marks	Weds 1/12	do pass	1/12
HB 75	defining "conviction" as used, forfeiture of bail etc.	1/4	Kanduch	Weds 1/10	do pass-amended	1/12
HB 12	state legal services & election laws	1/5	Scully	Weds 1/10	do pass-amended	1/15
HJR 2	petitions for habeas corpus relief in a criminal case be consolidated	1/8	Scully	1/12 Fri	do pass	1/12
HB 83	revise-Montana law enforcement academy -not located at university	1/8	Scully	1/12 Fri	do pass	1/12

JUDICIARY COMMITTEE

January 10, 1979

The regular meeting of the House Judiciary Committee was called to order by Chairman John Scully at 8:00 a.m. in room 436 of the Capitol Building on Wednesday, January 10. All members were present, however Representatives Anderson, Seifert and Teague came in late.

Bills scheduled to be heard were: House Bills 10, 12, 32, 41 and 75.

HOUSE BILL #12: Representative Lory will chair the meeting during the time necessary for Representative Scully to present his bill HB 12 to the committee.

This bill came about as a result of the feeling that legal services were being abused in and for state government. In the assessment of state legal service the subcommittee posed a number of questions for consideration. Who shall control which legal activity in the executive branch of state government. To what extent should legal talent employed by the various agencie report to the Attorney General or to the Governor? Who should handle litigation. Who should supervise attorneys working for state government. Should the Attorney General have the sole authority to appear for the state in court. Should special legal counsel litig only if designated as a special assistant Attorney General. Should we reduce the number of attorneys working in and for state government. These were many of the major issues confronted during the study. There was no communication with regard to legal activity in the state. No way to say how much money was being spent. Another difficulty examined was the ability of the state to attract and retain outstandin attorneys. A board was created with two members from the executive branch and one from the Attorney Generals office. By reviewing reques and accounting for their total costs, the review board will go a long way toward assuming the confidence and accountability necessary for an effective system. It will save the state of Montana a great deal of money. There has never been a close check. The bill also creates a pool in the state Attorney Generals office. It will be much cheaper if the pool is used. One thing I want to point out to you. During the interim when this committee met there was noone representing the governors office. I don't think they have scrutiniz the legal counsel because no action has been taken. Number 2, there is no pool in the attorney generals office to draw from. There has been objection to the statutory effect of this bill but I don't feel that it holds water.

MIKE McGRATH: I am from the Attorney Generals office and we favor this bill. I think we are approachin a crisis situation because the state is unable to retain attorneys. I don't think the state is getting its moneys worth. We are the training ground for young attorneys and then they move on. There are no career incentives.

There was general disucssion about the problems of the bill and legal counsel, how the pool would work, etc.

REPRESENTATIVE DAILY: I would like to follow up on what Representative Kemmis asked. Can we request the Governor's office send a representative.

Representative Teague asked about job protection and whether the attorneys in the pool would be covered in the pay plan.

MR. WEINGARTNER: When Greely took over as attorney general he fired every attorney there. Even with the pool what would keep a new attorney general from firing them. Much discussion about this.

REPRESENTATIVE EUDAILY: Isn't it true that this bill deals mostly with special legal services. Would this take care of the people on retainers.

After more general discussion the hearing closed on HB #12.

HOUSE BILL NO. 75: Representative Kanduch, sponsor of the bill, stated that this bill was a request by the Attorney General's office. This bill is for the purpose of determining the number of convictions, and to clarify a second or subsequent conviction, and the penalty for same.

DWAYNE TOOLEY: MONTANA HIGHWAY PATROL representative said that this bill would resolve the conflict between the drivers license statute and the penalty or conviction statute. It has led to lots of misunderstanding by the public. We would like to see it straightened out so that both sides of the law are the same.

There were no other proponents and no opponents.

REPRESENTATIVE KANDUCH: He summed up his statement. It is very confusing to go to court at the present time, but if both sides had the same meaning it would help simplify this.

Discussion about possible problems with the bill, and what the intent of the bill is. Representative Kemmis commented that what this bill does is define the word conviction and we must go through and see if this will apply.

Representative Lory asked what the average bond is and discussion this

REPRESENTATIVE KEMMIS: The bill appears to do more than counting of bails and forfeitures. Whereupon Mr. Tooley said that in the criminal act they are not allowed to count on the conviction side. The question was raised that they might be causing a problem somewhere down the line if the was passed.

Hearing closed on HB #75.

HOUSE BILL NO. 10: Larry Weinberg of the legislative counsel presented the bill. This is a code bill to revise and clarify the laws concerning state lands. This is in the same context as the other code commissioner bills. It is intended to clean up the archaic language and gramma It went through the bill and explained the various changes.

LEO BARRY: Department of State Lands. I am just here to answer questio Some parts of the bill were a rewrite of a present law to make it more understandable.

Representative Day raised the question of sections and parcels on page 6, section 7, line 9. At the present time there are portions of land that are not sections. He asked if this had created any problems at any time for the department.

MR. BARRY: We have not encountered this problem but it could come up and could create difficulties.

Having no further discussion the hearing closed on HB #10.

HOUSE BILL NO. 41: Bob Pyfer, from the Legislative Counsel. This bill is to clean up the language and revise the laws relating to estates, trusts, and fiduciary relationships. Some of the clause was not of the uniform probate code. I would like to go through the repealer ver briefly and the RCM sections. He mentioned that part of section 2 was in conflict with another section where they are allowable. Th repealer sections are meaningless and should be taken off the book

Representative Eudaily questione parts of page 16 and 17. After no further discussion the hearing closed on House Bill #41.

HOUSE BILL NO. 32: Representative Quilici as sponso of the bill stated that this bil relates to crime victims compensation and to try to make state sta comply with federal requirements. I would like to introduce Mr. M

JUDICIARY COMMITTEE
Executive session
Friday, January 12, 1979

The executive meeting of the House Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. in room 436 of the Capitol Building on Friday January 12. All members were present except Representatives Holmes and Seifert, excused. Representatives Teague and Lory came in late.

HOUSE BILL NO. 4: Representative Keyser moved "do pass". The motion carried with the vote unanimous. Representative Keyser moved that the bill be placed on the consent calendar. The motion carried with the vote unanimous.

HOUSE BILL NO. 5: There was general discussion about page 8 (title 45) The question was raised whether it would apply.

Representative Kemmis moved to strike Section 7 in its entirety. Page 7, line 16, through page 8, line 4 and renumber subsequent sections. The motion failed.

Representative Lory moved "do pass". The motion carried with the vote unanimous. He then moved to place the bill on the consent calendar. The motion carried with the vote unanimous.

HOUSE BILL NO. 6: Representative Eudaily moved "do pass" The motion carried with the vote unanimous. Representative Eudaily then moved to place the bill on the consent calendar. The motion carried with the vote unanimous.

The committee was recessed at 8:30 to hold the regular meeting.

8:55 a.m. (meeting resumed)

HOUSE BILL NO. 7: Representative Eudaily moved on Page 17, lines 5 and 6 to strike: "soldiers or sailors" and insert: "military personnel". The motion carried with the vote unanimous.

Representative Eudaily moved, on page 62, line 6, following: "admit" strike: "of". The motion carried with the vote unanimous.

Representative Holmes moved "do pass as amended". The motion carried with the vote unanimous. Representative Day moved to place on the consent calendar. The motion carried with the vote unanimous.

HOUSE BILL NO. 41: Representative Eudaily moved "do pass". The motion carried with the vote unanimous. Representative Keyser moved to the consent calendar with the same caveat as on the former bills.

HOUSE BILL NO. 75: Representative Kemmis moved to amend page 2, line 16, strike; "purposes of" and the motion carried with the vote unanimous.

Representative Lory moved "do pass as amended". The motion carried with the vote unanimous.

The executive meeting recessed to hear testimony from the governor's office concerning their stand on House Bill No. 12.

The executive session resumed at 10:30 a.m.

HOUSE JOINT RESOLUTION #2: Representative Day moved "do pass" and the motion carried with the vote unanimous. Representative Day moved to place the bill on the consent calendar with the same caveat as before. The motion carried with the vote unanimous.

HOUSE BILL NO. 83: Representative Lory moved "do pass" and the motion carried with the vote unanimous. Discussion decided that this bill should not be placed on the consent board. It should be debated.

Representative Lory moved to adjourn and the committee did so at 10:40 a.m.

John P. Scully, Chairman

Mary Ellen Connelly, Secretary

JPS:mec

STANDING COMMITTEE REPORT

January 12, 1979

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration House Bill No. 75

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 61-8-714, MCA, BY DEFINING 'CONVICTION', AS USED IN THAT SECTION, AS A FINAL CONVICTION OR A FORFEITURE OF BAIL OR COLLATERAL DEPOSITED TO SECURE THE DEFENDANT'S APPEARANCE WHICH FORFEITURE HAS NOT BEEN VACATED."

Respectfully report as follows: That House Bill No. 75,

Introduced copy, be amended as follows:

1. Page 2, line 16.
Following: "For the"
Strike: "purposes of"
Insert: "purpose of determining the number of convictions under"

BEST COPY AVAILABLE

And as amended
DO PASS

John P. Scully, Chairman.

STATE PUB. CO.
Helena, Mont.

Forty-Sixth LEGISLATIVE SESSION

COMMITTEE ON Judiciary - Senate

ILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
B - 104	1/15/79	1/18/79	1/25/79			1/24/79			
B - 6	1/15/79	1/18/79	1/18/79					1/18/79	
B - 41	1/18/79	1/18/79	1/18/79					1/18/79	
B - 120	1/17/79	1/23/79	1/23/79	1/23/79					
B - 124	1/17/79	1/23/79	Tabled 1/26/79						
B - 129	1/17/79	1/24/79	Tabled 2/7/79						
B - 133	1/17/79	1/23/79	1/24/79		1/24/79				
B - 137	1/17/79	1/19/79	1/19/79			1/19/79			
B - 152	1/18/79	1/25/79	1/30/79			1/29/79			
B - 153	1/18/79	1/25/79	2/7/79			2/7/79			
B - 164	1/18/79	1/27/79	1/29/79			1/28/79			
B - 165	1/18/79	1/24/79	1/24/79			1/24/79			
HB - 2	1/18/79	1/27/79	1/30/79					1/29/79	
HB - 25	1/18/79	1/26/79	1/30/79					1/29/79	
HR - 2	1/18/79	1/26/79	1/26/79					1/26/79	
HB - 120	1/19/79		Transferred 1/23/79						

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 26, 1979

The sixteenth meeting of the committee was called to order by Chairman Lensink at 10:00 a.m. in room 331 on the above date.

ROLL CALL:

All members were present with the exception of Senator Turnage, who was excused.

CONSIDERATION OF SENATE BILL 183:

Senator Van Valkenburg gave an explanation of this bill, which is an act to eliminate the criminal offense of criminal defamation from the criminal code. He said that the county attorneys find that this portion of the law is virtually unenforceable and that they feel that it is not in the best public interest. He introduced Tom Honzel, representing the Montana County Attorneys Association, who gave a statement in support of this bill. He cited a case in Jefferson County which was filed and ended up being a civil case, and he stated that it was virtually impossible to prosecute under this law.

There were no further proponents and no opponents.

Senator Brown stated that he opposed this bill. He felt that even though this law hasn't been used much that in a case where there was a very heated campaign and there was abusive and inflamatory statements made that he would like to see this bill on the books even if there was only one single instance in the state of Montana.

Senator Van Valkenburg stated that certainly there was a deterring value to have this statute on the books but that county attorneys really should be devoting their time to other things.

Senator Lensink questioned of Mr. Honzel if there have been any of these cases that have been carried out and Mr. Honzel stated that none had been successful.

Senator Lensink closed the hearing on this bill.

CONSIDERATION OF HOUSE BILL 95:

Representative John Scully gave an explanation of this bill which is an act to make the section applicable to all licenses under the liquor code; to remove language relating to criminal sanctions when the applicant makes a false statement on the license application and to provide for denial or

and then Towe said he would like to divide his motion into two motions. The motion on page 2, line 4 passed with Senators Galt and O'Hara voting no and all others yes. The vote on the second part failed with everyone voting no, except Senator Towe.

DISPOSITION OF HOUSE JOINT RESOLUTION 2:

Senator O'Hara moved that the bill be concurred in as amended. The motion carried with all voting yes, with the exception of Senator Towe who abstained.

CONSIDERATION OF HOUSE BILL 75:

Duane Tooley from the Highway Patrol gave an explanation of this bill in the absence of the sponsor, Representative Kanduch. He said that the way the language reads now that an individual who forfeits bail on the first offense of a DWI will not be treated as a second offender if he gets a DWI even a week later. He stated that the penalties become more severe with each offense and on the third offense there is a mandatory jail sentence.

There were no further proponents and no opponents.

Senator Towe explained that with this bill a forfeiture of bail will be considered a conviction and next time the offender will be considered as having a second offense.

Senator Van Valkenburg was concerned that if a person forfeited bail on a DWI in 1955 and then was picked up in 1968, would this be considered a second offense and Major Tooley said under this bill it would.

Senator O'Hara moved that House Bill 75 be concurred in. The motion carried with Senator Olson voting no.

DISPOSITION OF SENATE BILL 183:

Senator Brown moved that this bill do not pass. The motion carried unanimously.

DISPOSITION OF SENATE BILL 124:

Senator Olson moved that this bill be tabled. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 88:

Senator Brown moved that this bill be concurred in. The motion carried unanimously.

Senator Lensink said that they were going to assign SB 37 and SB 129 to a sub-committee to work out all the problems.

RECONSIDERATION OF HOUSE BILL 75:

Senator Towe moved to reconsider House Bill 75. The motion carried with Senator Anderson voting no.

Senator Van Valkenburg explained that he was concerned about this bill if a teenager should forfeit a bail for DWI and then maybe 10 or 15 years later he should have another offense, this would make a second offense for him. He felt there should be a period of time after which this should not apply. He requested that he take this up with the highway patrol and the county attorneys and they should be able to offer a reasonable period of time. Senator Lensink granted his request.

Senator Lensink reviewed the status of the bills which we have in this committee at this time.

There being no further business, the meeting was adjourned at 11:09 a.m.

Everett R. Lensink

SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

Date 1/26/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

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NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)			✓
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

Please sign & print clearly

HB-75
HB-95
BILL SB-183

SENATE Judiciary COMMITTEE

VISITORS' REGISTER

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DATE 1/2

Please note bill nc

NAME	REPRESENTING	BILL #	(check or SUPPORT	C
Donald R. Eidmann				
Duane B. Tooley	MHP	HB75	✓	
Tim Hough	County Attorneys	SB183	✓	
Marc Racicot	MCAA	SB 183	✓	
Tom Mitchell	Liquor Div.	HB 95	✓	
Bill Harrington	Dept of Rev. Investigation Div	HB 95		

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 29, 1979

The nineteenth meeting of the Senate Judiciary Committee was called to order in Room 331 of the Capitol Building on the above date by Senator Everett R. Lensink at 4:28 p.m.

ROLL CALL:

All members were present.

DISPOSITION OF SENATE BILL 204:

Senator Turnage moved that we amend this bill by striking the lines 19 through 23 and insert, "defendant convicted of the offense of deliberate homicide is presumed to be a danger to others and not entitled to be admitted to bail, which provision is rebuttable." The motion carried unanimously.

Senator Turnage moved that the bill do pass, as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 205:

Senator Brown commented how this would apply for students in college taking someone out of a dormitory; it could be considered kidnapping. The judge would have to consider it as mandatory minimum sentence.

Senator Turnage said that you have to give the courts some flexibility. He said that if we had a mandatory sentence for every single offense, there would not be enough jails.

Senator Towe said that he was apprehensive about the broadening of this application.

Senator Lensink wondered if the reason for mandatory sentences is thatthe judges weren't doing a good job. Senator Van Valkenburg said that he thought the judges are reacting to public pressure and are doing a much better job of handing out sentences. He stated that the prisons are full and the county jails are 3/4 full. He did not feel that we should limit the discretion of fairly experienced people about who should go to prison and who should not.

Senator Turnage moved that on page 2, lines 10 and 11, the bill be amended to read, "unless a weapon was used in the commission of the offense" and also amend the title. The motion carried unanimously. He also moved to amend the title by striking "delete" and insert "to restrict the exceptions". The motion carried. Senator Turnage moved that the bill do pass, as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 132:

Senator Brown moved that this bill cannot be amended to

DISPOSITION OF HOUSE BILL 75:

Senator Van Valkenburg moved that House Bill 75 be amended as follows: on page 2, line 20, insert "an offender is considered to have been previously convicted for the purpose of this section, if less than five years have elapsed between the commission of the present offense and a previous conviction". The motion passed unanimously.

Senator Van Valkenburg moved that the bill be concurred in, as amended. The motion carried unanimously.

There being no further business, the meeting adjourned.

Everett R. Lensink

SENATOR EVERETT R. LENSINK
Chairman, Senate Judiciary
Committee

Date 4/22/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)			

Each Day Attach to Minutes.

January 31, 1979

SENATE STANDING COMMITTEE REPORT

That House Bill No. 75 be amended as follows:

1. Title, line 9.
Following: "VACATED"
Insert: ", WHICH CONVICTION OR FORFEITURE OCCURRED WITHIN 5 YEARS OF THE COMMISSION OF THE PRESENT OFFENSE"

2. Page 2.
Following: line 20
Insert: "An offender is considered to have been previously convicted for the purposes of this section if less than 5 years has elapsed between the commission of the present offense and a previous conviction."

HOUSE BILL NO. 75

INTRODUCED BY KANDUCH

BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 61-8-714, MCA, BY DEFINING "CONVICTION", AS USED IN THAT SECTION, AS A FINAL CONVICTION OR A FORFEITURE OF BAIL OR COLLATERAL DEPOSITED TO SECURE THE DEFENDANT'S APPEARANCE, WHICH FORFEITURE HAS NOT BEEN VACATED AND WHICH CONVICTION OR FORFEITURE OCCURRED WITHIN 5 YEARS OF THE COMMISSION OF THE PRESENT OFFENSE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving while intoxicated. (1) Every person who is convicted of a violation of 61-8-401 shall be punished by a fine of not less than $100 or more than $500. On a second conviction, he shall be punished by a fine of not less than $300 or more than $500. On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days or more than 1 year, to which may be added, in the discretion of the court, a fine of not less than $500 or more than $1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(2) Except as otherwise provided in this section, the court may, in its discretion, suspend the execution of any sentence imposed under subsection (1) on the condition that the defendant successfully complete a course in a driver improvement school approved by the court or an alcohol treatment program approved by the department of institutions. Each school or institution providing such education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been accepted by the school or treatment program. If the defendant fails to attend the school or the treatment program, the school or institution shall notify the court of the failure.

(3) For the ~~purposes of~~ PURPOSE OF DETERMINING THE NUMBER OF CONVICTIONS UNDER this section, "conviction" means a final conviction, as defined in 45-2-101, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court, which forfeiture has not been vacated. AN OFFENDER IS CONSIDERED TO HAVE BEEN PREVIOUSLY CONVICTED FOR THE PURPOSES OF THIS SECTION IF LESS THAN 5 YEARS HAS ELAPSED BETWEEN THE COMMISSION OF THE PRESENT OFFENSE AND A

REFERENCE BILL

1 PREVIOUS CONVICTION."

-End-

HOUSE BILL NO. 75

INTRODUCED BY KANDUCH

BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 61-8-714, MCA, BY DEFINING "CONVICTION", AS USED IN THAT SECTION, AS A FINAL CONVICTION OR A FORFEITURE OF BAIL OR COLLATERAL DEPOSITED TO SECURE THE DEFENDANT'S APPEARANCE, WHICH FORFEITURE HAS NOT BEEN VACATED AND WHICH CONVICTION OR FORFEITURE OCCURRED WITHIN 5 YEARS OF THE COMMISSION OF THE PRESENT OFFENSE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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"61-8-714. Penalty for driving while intoxicated. (1) Every person who is convicted of a violation of 61-8-401 shall be punished by a fine of not less than $100 or more than $500. On a second conviction, he shall be punished by a fine of not less than $300 or more than $500. On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days or more than 1 year, to which may be added, in the discretion of the court, a fine of not less than $500 or more than $1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(2) Except as otherwise provided in this section, the court may, in its discretion, suspend the execution of any sentence imposed under subsection (1) on the condition that the defendant successfully complete a course in a driver improvement school approved by the court or an alcohol treatment program approved by the department of institutions. Each school or institution providing such education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been accepted by the school or treatment program. If the defendant fails to attend the school or the treatment program, the school or institution shall notify the court of the failure.

(3) For the ~~purposes of~~ PURPOSE OF DETERMINING THE NUMBER OF CONVICTIONS UNDER this section, "conviction" means a final conviction, as defined in 45-2-101, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court, which forfeiture has not been vacated. AN OFFENDER IS CONSIDERED TO HAVE BEEN PREVIOUSLY CONVICTED FOR THE PURPOSES OF THIS SECTION IF LESS THAN 5 YEARS HAVE ELAPSED BETWEEN THE COMMISSION OF THE PRESENT OFFENSE AND A

1 PREVIOUS CONVICTIONS"

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